

**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF BOATING AND OCEAN RECREATION**

**PUBLIC AUCTION**

**FOR**

**STATE LAND LEASE AUCTION BY SEALED BID**

**AUCTION DATE: December 2, 2010**

**ISLAND OF OAHU**

PUBLIC AUCTION BID PACKET  
FOR  
STATE LAND LEASE AUCTION BY SEALED BID  
ISLAND OF OAHU

TABLE OF CONTENTS

NOTICE OF PUBLIC AUCTION BY SEALED BID.....	3
INSTRUCTIONS TO BIDDERS .....	7
APPENDIX A: APPLICATION & QUALIFICATION QUESTIONNAIRE ...	14
APPENDIX B: NOTICE OF INTENTION TO BID.....	23
APPENDIX C: MEMORANDUM OF SALE.....	25
APPENDIX D: TAX CLEARANCES .....	26
APPENDIX E: AFFIDAVIT OF NON-ARREARS.....	28
APPENDIX F: MEMORANDUM OF CHARGES .....	33
APPENDIX G: MAP EXHIBIT.....	34
APPENDIX H: DRAFT LEASE .....	41

**NOTICE OF PUBLIC AUCTION  
AUCTION SALE OF LEASE BY SEALED BID**

Notice is hereby given that the Department of Land and Natural Resources (DLNR), Division of Boating and Ocean Recreation (DOBOR), State of Hawaii, will conduct a public auction by sealed bid for the lease of a certain property comprised of fast land parcels and an easement located at Heeia-Kea Small Boat Harbor, Heeia, Koolaupoko, Kaneohe, Oahu, Hawaii.

**A. Tentative Timeline and Place of Auction.**

Publication of Public Auction and Bid Packet Pick up: The Star-Advertiser, October 30, 31 and November 1, 2010, and on the DOBOR Internet web page located at [www.hawaii.gov/dlnr/dbor/bor1110lgl.htm](http://www.hawaii.gov/dlnr/dbor/bor1110lgl.htm).

Notice of Intention to Bid, Application and Qualifications Questionnaire: All prospective bidders must submit the Notice of Intention to Bid, with the required Qualification Questionnaire, Application and all required information to the DLNR, Division of Boating and Ocean Recreation Conference Room, 333 Queen Street, Suite 300, Honolulu, Hawaii 96813, **no later than 4:00 P.M. on Thursday, November 18, 2010.**

Notification of Disqualification and Eligibility of Prospective Bidders: Only Bidders who previously submitted a completed Notice of Intention to Bid, Application and Qualification Questionnaire with all required information, that are in compliance with the instructions to bidders shall be notified as to qualification to proceed.

Delivery Deadline for Sealed Bids and Announcement of Successful Bidder: Sealed bids shall be submitted to the Division of Boating and Ocean Recreation at 333 Queen Street, Suite 300, Honolulu, Hawaii, 96813 **no later than 3:00 P.M. Thursday, December 2, 2010.** Bids will be opened at 10:00 a.m. on Friday, December 3 in the Division of Boating and Ocean Recreation, 333 Queen Street Suite 300, Honolulu, Hawaii, 96813. An announcement will be made soon thereafter. Said auction may be cancelled, postponed or continued from time to time by public announcement to that effect by the Chairperson or the Chairperson's representative at the time and place appointed for the auction.

**B. General Description of the Property.**

The three parcels of land, improvements, and a nonexclusive pipeline easement covered by this lease, generally situated and located at Heeia-Kea Boat Small Boat Harbor, Heeia, Koolaupoko, Kaneohe, Oahu, Hawaii, being the site presently operated by the Deli Corporation (Revocable Permit B-07-31), 46-499 Kamehameha Hwy and further identified within TMK: 4-6-006: Por 067, are as follows:

Parcel 1: Containing an area of approximately 980 square feet;

Parcel 2: Containing an area of approximately 1,020 square feet;

Parcel 3: Containing an area of approximately 2,244 square feet.

Easement: A common, non-exclusive pipeline easement of 970 sq. ft. is provided, for subsurface pipelines, together with a right-of-way for the installation, repair, maintenance and replacement thereof.

C. Term and Use.

The term of the lease shall be thirty-five (35) years from the execution of the lease. The parcels and the easement shall be used for the following purposes only as described above: Parcel 1, for petroleum storage tanks, support facilities and a waste oil containment system; Parcel 2, for dockside fueling operations, fueling equipment and a sewage pump-out system; Parcel 3, for operations of a marine convenience store, over the counter food service, ship chandlery, and marine related services as approved by the Department; non-exclusive easement for subsurface pipelines for the installation, repair, maintenance and replacement of said subsurface pipelines.

D. Rental.

1. MINIMUM UPSET ANNUAL RENTAL: TWENTY FOUR THOUSAND DOLLARS (\$24, 000.00).

2. Minimum Annual Base Rental and Percentage Rent:

A. Annual Rent. The greater of the minimum annual base rent or annual percentage rent, if any.

B. Minimum Annual Base Rent.

1. Minimum annual base rent for the first five (5) years shall be: (The minimum successful bid amount) per annum.

2. Fixed increases in minimum annual base rent.

a. Minimum annual base rent for years six (6) through ten (10) shall be equal to the fifth year's minimum annual base rent multiplied by 1.05, and shall be in the amount of (\$TBD) per annum.

b. Minimum annual base rent for years eleven (11) through fifteen (15) shall be equal to the tenth year's minimum annual base rent multiplied by 1.05, and shall be in the amount (\$TBD) per annum.

3. Minimum annual base rent shall be payable in advance, without notice or demand, in equal monthly installments on the first of each and every month.

C. Percentage Rent.

1. Percentage rent shall be based on the annual gross revenues from all commercial uses of the subject property.
2. Percentage rent for the first fifteen (15) years shall be equal to five percent (5.0%) of the annual gross revenues from the premises.
3. The gross revenues shall include all revenues generated from, on, or within the premises, including the gross revenues of any sublessee.
4. Percentage rent shall be payable quarterly in arrears, without notice or demand, no later than thirty (30) days after March 31, June 30, September 30, December 31 of each year, provided, however, that the Chairperson may extend the deadline for payment of percentage rents for good cause. Each payment of the percentage rent shall be accompanied by a written statement certified as correct by the lessee, or person duly authorized by lessee, showing in accurate detail the amount of gross receipts, by category, for payment period. Lessor may, in Lessor's sole discretion, specify the format and details required in the Lessee's written statement of gross receipts.

- D. For the first (1st) year, the annual base rent is waived; however the lessee shall pay, on a quarterly basis as described above the gross percentage fees of five percent (5%) collected during the first year.

E. Improvements, Use and Operation.

The bidder is responsible to inspect the premises, and be familiar with all aspects of the property, including but not limited to the condition of all structures, equipment, operation, and level of commerce for this type of operation. The bidder's manager shall have a minimum of three (3) years experience or more as an owner or manager, and shall be proficient in the operation of a Marine fueling facility or similar business consisting of a fuel sales, convenience store, and food service business. The successful bidder shall be required to construct, install and operate all fueling equipment, vessel sewage pump-out equipment, and maintain all improvements on the subject property. The successful bidder may purchase the existing fuel equipment directly from its present owner, The Deli Corporation. The existing equipment includes the fuel storage tanks, pipelines, pumps and other fuel related equipment. Should the successful bidder choose not to purchase such equipment, and install its own, then the present Permittee, the Deli Corporation, shall have sixty (60) days to remove all equipment. The successful bidder (lessee) shall within six months of removal of the existing equipment, complete the construction and installation of the fueling equipment in accordance with plans and specifications submitted by the Lessee to and approved in writing by the Chairperson and in full compliance with all applicable laws, ordinances,

rules and regulations. During closure of fuel dock, the lessee may use a fuel truck to continue continuity of service, during the replacement period. At no time shall the lessee fail to provide fuel service. In addition, the bidder shall be responsible for the opening/closing, servicing of supplies, and cleaning of the restroom adjacent to Parcel 1.

**F. Determination of Successful Bidder:**

All bidders must be in full compliance with the auction procedures, terms and conditions.

Sealed Bids will be opened at 10:00 A.M. on Friday, December 3, 2010 in the Division of Boating and Ocean Recreation Conference Room, 333 Queen Street, Suite 300, Honolulu, Hawaii, 96813. Bids shall be greater than upset annual rental stated herein and the qualified bidder making the highest bid equal to or in excess of the upset minimum annual rental shall be considered the successful bidder. Should a bid be equal to another competitive bidder, the bid with the earlier time stamp shall prevail. The State reserves the right to cancel the public auction or reject any and all bids.

**G. Notice of Intention to Bid and Qualification Questionnaire:**

Any interested bidder shall be required to submit its Notice of Intention to Bid and Qualification Questionnaire to the Division of Boating and Ocean Recreation, 333 Queen Street Suite 300, Honolulu, Hawaii 96813, **no later than 4:00 P.M. on or before Thursday, November 18, 2010**, together with appropriate clearances from the State of Hawaii and the City and County of Honolulu showing that the person is not in arrears in the payment of taxes, rents or other obligations to said political entities.

**H. Auction Procedure and Opening of Sealed Bids:**

Auction procedures and terms and conditions are contained in the Instructions to Bidders, the Lease and the Notice of Intention to Bid. In case of conflict with this Notice, the terms and provisions of the aforesaid documents shall be controlling. Copies of said documents may be obtained at the Division of Boating and Ocean Recreation, 333 Queen Street, Suite 300, Honolulu, Hawaii, 96813 for a nonrefundable fee of \$10.00.

/s/ Paul J. Conry  
for Laura H. Thielen,  
Chairperson and Director

ADVERTISEMENT: The Star-Advertiser 10/30, 10/31, 11/1/2010

## INSTRUCTIONS TO BIDDERS

### PROCEDURES AND CONDITIONS OF THE AUCTION BY SEALED BID FOR THE SALE OF A STATE LAND LEASE ON THE ISLAND OF OAHU

The following procedures, terms and conditions shall be applicable to the sale at public auction by sealed bid of a Department of Land and Natural Resources (DLNR), Division of Boating and Ocean Recreation (DOBOR) lease of certain parcels of fast land and a non-exclusive pipeline easement on the island of Oahu. The tentative timeline of significant dates and location of Auction by Sealed Bid Shall be as follows:

#### Announcement on the DOBOR Website and Advertisement in The Star-Advertiser of Auction and Auction Bid Packet Pick-up:

Packets shall be available on October 30, 2010. All communication must be in writing. See DOBOR web site for updates, announcements and additional information at [www.hawaii.gov/dbor/bor11101g1.htm](http://www.hawaii.gov/dbor/bor11101g1.htm)

#### Notice of Intention to Bid, Application and Qualifications:

All prospective bidders must submit the Notice of Intention to Bid with the required Application, and Qualification Questionnaire, with all required information to the DLNR, Division of Boating and Ocean Recreation, 333 Queen Street, Suite 300, Honolulu, Hawaii 96813, **no later than 4:00 P.M. on Thursday, November 18, 2010.**

#### Notification of Disqualification and Eligibility to prospective Bidders:

All Bidders who submitted a completed Notice of Intention to Bid, Application, and Qualification Questionnaire with all required information shall be notified as to eligibility and qualification to proceed.

#### Delivery Deadline for Sealed Bids and Announcement of Successful Bidder:

The sealed bids shall be submitted to the Division of Boating and Ocean Recreation, 333 Queen Street, Suite 300, Honolulu, Hawaii, 96813 **no later than 3:00 p.m. Thursday, December 2, 2010.**

Bids will be opened at 10:00 A.M. on Friday, December 3, 2010 in the Division of Boating and Ocean Recreation Conference Room, 333 Queen Street Suite 300, Honolulu, Hawaii, 96813. An announcement will be made soon thereafter. Said auction may be cancelled, postponed or continued from time to time by public announcement to that effect by the Chairperson or the Chairperson's representative at the time and place appointed for the auction.

The Auction Bid Packet describes the Auction by Sealed Bid, which includes a proposed draft of the lease document setting forth fully the terms and conditions to be observed and performed by the lessee, together with a survey map and description of the land to be leased. The Auction Bid Packet may be examined at the following DOBOR offices:

Division of Boating and Ocean Recreation Administrative Office, 333 Queen Street, Suite 300, Honolulu, Hawaii, 96813

Oahu District Office, 4 Sand Island Access Road, Honolulu, Hawaii, 96819

Hawaii District Office, 74-380 Kealahou Parkway, Kailua-Kona, Hawaii, 96740

Maui District Office, 101 Maalaea Boat Harbor Road, Wailuku, Maui, Hawaii, 96793

Kauai District Office, 4370 Kukui Grove Street, Suite 109, Lihue, Kauai, Hawaii, 96766

Prospective bidders shall refer to the draft of the lease document for bond requirements, rent, rental reopening, insurance requirement, utilization requirement, improvement requirement, assignment of lease evaluation policy, reservations and other terms and conditions.

Each prospective bidder shall carefully examine all documents. Failure on the part of any prospective bidder to make such an examination shall not be grounds for any claim that the prospective bidder did not understand the conditions of the lease or auction. Each prospective bidder shall notify the Administrator, in writing, of any ambiguity, inconsistency or conflict in the documents. Furthermore, prospective bidders are responsible to inspect the premises of the area to be bid on and be familiar with all aspects of the property, including but not limited to the condition of all structures, equipment, operation, level of commerce for this type of operation. The bidder's manager shall be proficient in the operation of a fueling facility, convenience store, and food service business.

Please contact DOBOR Property Management at 587-1978 for showings.

A. QUALIFICATION OF BIDDERS:

Any person shall be entitled to bid at this auction except a person:

1. Who does not file a written Notice of Intention to Bid, Application, a completed Qualification Questionnaire and required information addressed to the Chairperson, c/o Division of Boating and Ocean Recreation, 333 Queen Street, Suite 300, Honolulu, Hawaii 96813, on or before 4:00 p.m., Thursday, November 18, 2010, together with appropriate clearances from the State of Hawaii and the City and County of Honolulu in which the premises are located showing that the person is not in arrears in the payment of taxes, rents or other obligations to said political entities.
2. Who is in arrears in the payment of taxes, rents or other obligations to the State of Hawaii or to any of its political subdivisions, including default as a surety or failure to perform faithfully and diligently any previous contract with the State. This provision also applies to any parent or any subsidiary of the person or any corporation owned substantially by a stockholder or stockholders of the person who is in arrears in any payments owing to the State or is in default of any obligation owed to the State or any of its political subdivisions, including default as a surety or failure to perform faithfully and diligently any previous contract with the State.



3. Who in the last Five (5) years has had a lease or permit terminated by the State of Hawaii for breach of contract.
4. Who proposes to bid for another without first having fully disclosed the identity and eligibility to bid for such other person; in the case of a corporation, who fails to produce a resolution from the corporation's board of directors to authorize the person to so bid and, if successful, to execute the necessary documents in connection therewith.
5. Who fails, upon demand of the Chairperson or his agent, to produce in cash or certified check drawn from a bank authorized to do business in the State of Hawaii in the amount of Eleven Thousand Four Dollars (\$11,004.00), in which, Six Thousand Dollars (\$6,000.00) represents twenty-five percent (25%) of the upset annual rental for the second year of the lease, plus the costs incurred in the administration of this public auction, which costs are Five Thousand Four Dollars (\$5,004.00)
6. Who is a minor.
7. Who does not meet the minimum requirement of three (3) years experience as an owner or manager, or whose manager does not meet the minimum requirement of three (3) years experience in the business of operating a successful marine fueling facility, or similar retail-fuel operation.
8. Who is unable to complete the Qualification Questionnaire and provide the references and description of experience to meet the minimum requirements necessary to operate a marine fueling facility or similar type of business?

**B. PRE-QUALIFYING CRITERIA TO BE MET BY ALL BIDDERS:**

**1. QUALIFICATIONS AND EXPERIENCE:**

- a. Ownership expertise in a marine fueling facility with components of a convenience store, fuel sales and food service business; and/or management of a similar facility with components of the same, for a minimum of Three (3) years.
- b. That the Bidder's finances are sufficient to meet the requirements, and must show evidence of having at minimum \$50,000.00 in working capital. In addition the Bidders must provide a business plan reflecting the financial ability, and letter of pre-qualification of any necessary loan to fund this operation.

**2. BUSINESS PLAN:**

- a. The Business plan submitted by the Bidder must demonstrate soundness/feasibility of development, marketing, and financial components, as well as the financial ability to fund operation.

C. APPLICATION PROCEDURES:

Eligibility to bid on this lease shall be determined by the information supplied by the prospective bidders in the Application and Qualification Questionnaire Form (Application), APPENDIX A. Any Bidder who has not fully completed and submitted an application by the date and time indicated below will not be allowed to bid for this lease.

One (1) original and one (1) copy of the completed Notice of Intention to Bid, Application, and Qualification Questionnaire, with all the required attachments, must be received with the DOBOR time stamped **no later than 4:00 P.M., Thursday, November 18, 2010** by the Division of Boating and Ocean Recreation, 333 Queen St., Suite 300, Honolulu, Hawaii, 96813. Facsimile copies shall not be accepted. The official time shall be that recorded on the DOBOR receiving time stamp clock. These conditions apply regardless of whether an application is mailed or hand-delivered. The State assumes no responsibility for being late due to delays in mail or delivery service.

A prospective Bidder, at the time an Application is submitted, must be capable of performing all of the terms and conditions of the lease which may be awarded. Refer to the Draft Lease for all bond requirements, rental reopening, insurance requirements, utilization requirement, improvement requirement, assignment of lease policy, reservations, and other terms and conditions.

Each Bidder shall be contacted and informed in writing, in advance of the date of the auction, as to his or her eligibility or non-eligibility to submit a sealed bid. Each Bidder must provide a current email address and phone contact information.

All financial information provided in the Application and Qualification Questionnaire shall remain confidential.

All applications will be reviewed by a screening committee. The screening committee will be guided by the general qualifying criteria in sections A and B.

An Application may be rejected for any of the following reasons:

1. If the application is late, incomplete or does not adhere to the format and/or instructions;
2. If it is shown that inaccurate statements are made in the application;
3. If the application fails to meet any of the general qualifying or prequalifying criteria in sections A and B;
4. It is not in the best interest of the State.

D. AUCTION PROCEDURE AND DETERMINATION OF SUCCESSFUL BIDDER:

All qualified bidders must comply with all sections listed within the instructions to bidders, and submit all required information. The sealed bids shall be submitted to the Division of Boating and Ocean Recreation, 333 Queen Street, Suite 300, Honolulu, Hawaii, 96813 **no later than 3:00 p.m. Thursday, December 2, 2010.** Bids will be opened at 10:00 A.M. on Friday December 3, 2010 in the Division of Boating and Ocean Recreation Conference Room, 333 Queen Street Suite 300, Honolulu, Hawaii, 96813. An announcement will be made soon thereafter and post to the DOBOR web site. Said auction may be cancelled, postponed or continued from time to time by public announcement to that effect by the Chairperson or her representative at the time and place appointed for the auction.

1. Sealed bids will be opened 10:00 A.M. on Friday, December 3, 2010 in the Division of Boating and Ocean Recreation Conference Room, 333 Queen Street Suite 300.
2. Sealed bids by qualified applicants shall not be less than the upset annual rental stated in the Notice of Public Auction. The qualified bidder making the highest annual rent bid that is equal to or in excess of the upset minimum annual rental shall be considered the successful bidder.
3. Should two or more bids be in the same amount, then the bidder who has submitted the earliest qualified bid shall be the successful bidder.

E. DUTIES OF SUCCESSFUL BIDDER:

The successful bidder shall, upon the time of notification, execute a Memorandum of Sale respecting his purchase and pay in cash or certified or cashier's check:

1. All charges required by law, including the administrative costs of the auction, which include the appraisal fee, maps, descriptions, documents and the advertising costs in the amount of Eleven Thousand Four Dollars (\$11,004.00).
2. The amount set forth above in Paragraph A.5. In addition, the successful bidder shall:
  - a. Within one (1) working day from the date of auction, pay the difference between twenty-five percent (25%) of the annual rental bid for the second year and twenty-five percent (25%) of the upset rental as set forth above in Paragraph A.5.
  - b. Within seven (7) days of the auction, furnish the Chairperson or Chairperson's appointed agent an affidavit of non-arrears from the appropriate remaining political subdivisions of the State of Hawaii.

- c. Within seven (7) days after the auction, provide notice as to the intention to replace the original fuel equipment or shall provide a copy of the Bill of Sale of all fueling equipment purchased from the previous tenant.
- d. Within fifteen (15) days of execution of lease, deliver a performance bond in the manner and amount (of twice the annual rent) as specified in Paragraph 18. of the lease.
- e. Any change of use of the property must first receive prior approval in writing from the Department, in addition an Environmental Assessment (EA) and an Environmental Impact Study (EIS) may be required with a use change. Should an EA or EIS be required, then within thirty (30) days after the EIS a Statement or Negative declaration has been approved; submit any completed plans to DOBOR, State of Hawaii, for approval.
- f. Bidder/Lessee shall comply with all necessary approvals and applicable statutes, ordinances, rules, regulations, and conditions of Federal, State, and County regulations.
- g. Provide proof to obtain insurance for an operation of this type and maintain insurance for the entire term of the lease with the state as additionally insured, as required by the lease.
- h. Provide a business plan reflecting the financial ability, and letter of prequalification of any necessary loan to fund this operation.

**F EXECUTION OF DOCUMENTS AND TENDER OF PAYMENTS; DAMAGES FOR FAILURE:**

Within a reasonable period following the auction, the Division of Boating and Ocean Recreation shall tender to the successful bidder a lease for execution providing for rental payments in accordance with the bid at auction. The successful Bidder shall, within Fourteen (14) days of receipt of said lease, execute and return said lease to the Division of Boating and Ocean Recreation.

In the event the successful Bidder shall fail to execute and return the lease within fourteen (14) days of receipt, or shall fail to make any of the payments or furnish a satisfactory performance bond as heretofore required, the Division of Boating and Ocean Recreation may, without further notice, treat such failure as a breach of contract, automatically terminating the rights of the successful bidder, and retain all or any portion of sums previously paid by the successful Bidder as liquidated damages. The retention of liquidated damages shall be in addition to any other rights or remedies that the Division of Boating and Ocean Recreation may be entitled to pursue for breach of contract.

EXECUTED at the Office of the Chairperson, Board of Land and Natural Resources  
this 27<sup>th</sup> — day of October, 2010.

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

for By Paul J. Gonyea  
Laura H. Thielen  
Chairperson and Director

## APPENDIX A

### APPLICATION AND QUALIFICATION QUESTIONNAIRE

#### APPLICATION:

Write answers in the spaces provided. Attach additional sheets as necessary, clearly indicating the applicable section number

1. Applicant's legal name: \_\_\_\_\_

Applicant's full mailing address: \_\_\_\_\_

\_\_\_\_\_

2. Name of contact person: \_\_\_\_\_

Phone number: \_\_\_\_\_

3. Intended use of property: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4. Applicant intends to hold title to the lease as:

Type of owner (check one):

- ☐ Individual
- ☐ Husband and Wife
- ☐ Sole Proprietorship
- ☐ Joint Venture
- ☐ Partnership
- ☐ Corporation

Tenancy (check one, if applicable):

- ☐ Tenant in Severalty
- ☐ Joint Tenants
- ☐ Tenants in Common
- ☐ Tenants by Entirety

5. If applicant is a partnership or joint venture, answer the following:

A. Name, address and percentage share owned by each partner or joint venture member:

Name	Address	Share
_____	_____	_____
_____	_____	_____
_____	_____	_____

B. Date of Organization: \_\_\_\_\_

C. General or Limited Partnership (if applicable): \_\_\_\_\_

D. Recorded: \_\_\_\_\_  
County State Date

E. Currently registered in Hawaii: Yes/No If Yes, as of: \_\_\_\_\_

6. If applicant is a corporation, answer the following:

A. When incorporated: \_\_\_\_\_

B. In what state or country: \_\_\_\_\_

C. Authorized to do business in Hawaii: Yes/No If Yes, as of: \_\_\_\_\_

D. Provide the name, address and shares of stock for each officer of the corporation:

President: Name \_\_\_\_\_

Address: \_\_\_\_\_

Number of stock shares \_\_\_\_\_ Percentage of shares \_\_\_\_\_

Vice-President: Name \_\_\_\_\_

Address: \_\_\_\_\_

Number of stock shares \_\_\_\_\_ Percentage of shares \_\_\_\_\_

Secretary: Name \_\_\_\_\_

Address: \_\_\_\_\_

Number of stock shares \_\_\_\_\_ Percentage of shares \_\_\_\_\_

Treasurer: Name \_\_\_\_\_

Address: \_\_\_\_\_

Other: Name \_\_\_\_\_

Address: \_\_\_\_\_

Number of stock shares \_\_\_\_\_ Percentage of shares \_\_\_\_\_

E. Provide the name, address and shares of stock for each member of the corporation's Board of Directors:

Name \_\_\_\_\_

Address: \_\_\_\_\_

Number of stock shares \_\_\_\_\_ Percentage of shares \_\_\_\_\_

Name \_\_\_\_\_

Address: \_\_\_\_\_

Number of stock shares \_\_\_\_\_ Percentage of shares \_\_\_\_\_

Name \_\_\_\_\_

Address: \_\_\_\_\_

Number of stock shares \_\_\_\_\_ Percentage of shares \_\_\_\_\_

F. Provide the name, address and shares of stock for each principal stockholder who is not named in 6.D. and 6.E. above, (Principal stockholder means one holding 10% or more of the outstanding stock of the corporation).

Name \_\_\_\_\_

Address: \_\_\_\_\_

Number of stock shares \_\_\_\_\_ Percentage of shares \_\_\_\_\_

Name \_\_\_\_\_

Address: \_\_\_\_\_

Number of stock shares \_\_\_\_\_ Percentage of shares \_\_\_\_\_

Name \_\_\_\_\_

Address: \_\_\_\_\_

Number of stock shares \_\_\_\_\_ Percentage of shares \_\_\_\_\_

Name \_\_\_\_\_



Address: \_\_\_\_\_

Number of stock shares \_\_\_\_\_ Percentage of shares \_\_\_\_\_

7. List all State of Hawaii leases, permits, licenses, easements, sales, etc. which the Applicant has been a party to, including as a director, officer or shareholder:

<u>Doc. No.</u>	<u>Type of Agreement</u>	<u>Term of Agreement</u>
_____	_____	_____
_____	_____	_____

8. Attach tax clearances from both the State of Hawaii and the County which the auctioned land is in (refer to Appendix D).

**QUALIFICATION QUESTIONNAIRE:**  
**(CONFIDENTIAL)**

Pursuant to Chapter 171, Hawaii Revised Statutes, as amended, each prospective Bidder shall furnish evidence of financial ability, experience and competence to carry out the terms and conditions of the Marine Fueling Facility Lease at Heeia-Kea Boat Harbor, Honolulu, Hawaii.

Failure to submit this qualification form, duly acknowledged, with all questions completely answered shall be sufficient cause to disqualify a Bidder. The information in this qualification form will be held confidential and returned after it has served its purpose.

If the space provided on this form is inadequate to give fully the information requested, attach a separate sheet or sheets hereto and make reference thereto at the appropriate place on this form. Each separate sheet shall be signed by the prospective bidder.

**A. MINIMUM FINANCIAL AND EXPERIENCE WARRANTY:**

The Bidder submitting a bid warrants the following qualifications:

1. That the Bidder and/or its Bidder's manager have successfully operated a marine fueling facility with components of a convenience store, fuel sales and food service or similar, retail business for a period of at least Three (3) years with average annual gross receipts of \$60,000.00 or more.
2. That the Bidder's finances are sufficient to meet the requirements, and must show evidence of having at minimum \$50,000.00 in working capital, In addition must provide a business plan reflecting the financial ability, and letter of pre-qualification of any necessary loan to fund this operation.

**B. INFORMATION TO BE FURNISHED BY BIDDERS:**

(Items 1 through 10)

1. Opposite the appropriate word, insert full name of Bidder.  
Individual: \_\_\_\_\_  
Partnership: \_\_\_\_\_  
Corporation: \_\_\_\_\_
2. Principal office address: \_\_\_\_\_
3. Number of years of experience of the Bidder as an owner, or manager, or manager of the Bidder, making this proposal in the operation of a marine fueling facility (s), or similar, retail business (s): \_\_\_\_\_ years.

(Note: Bidder or the manager of Bidder must have a minimum of three (3) years experience as an owner or manager the marine fueling facility, or similar, retail business.)

4. Give names, addresses and contact information of places at which Bidder or manager of Bidder has operated or is operating the above-mentioned business, together with the dates of operation: (Use separate sheets, if necessary.)

Type of Operation (s): \_\_\_\_\_

Name	Address	Date
_____	_____	_____
_____	_____	_____
_____	_____	_____

5. Names and addresses of landlords or lessors listed in Item 4, above, where average annual gross receipts from the above mentioned operations exceeded the sum of \$60,000.00 or more.
6. Supply complete and most recent price list from one of the operations set forth in Item 4, above.
7. Have any leases on any of the above-mentioned businesses in Item 4, above, ever been cancelled?
- Yes ( ) No ( ) If the answer is "yes," give details on separate sheet.
8. Give at least three (3) credit references as to your financial ability to meet the marine fueling facility lease and bid obligations.
9. References: Give at least three (3) references as to the ability to operate and manage a successful marine fueling facility, or similar retail business.

Name	Address	Phone
_____	_____	_____
_____	_____	_____
_____	_____	_____

10. Have you, within the last five (5) years, had any sale lease, license, permit or easement covering public land belonging to the State of Hawaii, cancelled for failure to satisfy the terms and conditions thereof (Section 171-13, Hawaii Revised Statutes).

Yes ( ) No ( ) If the answer is "yes," give details on separate sheet.

C. INFORMATION TO BE SUPPLIED BY CORPORATIONS ONLY:

(Items 11 through 16)

11. When incorporated: \_\_\_\_\_

12. In what State: \_\_\_\_\_
13. Authorized to do business in the State of Hawaii? (yes/no)\_\_\_\_\_ If so, as of what date \_\_\_\_\_ .  
(Note: All corporate bidders must be registered to do business in Hawaii and be authorized to operate a marine fueling facility, or similar, retail business prior to the submission of the bid.)
14. Names, addresses and percentage of voting stock of principal officers:
- President: \_\_\_\_\_
- Vice President: \_\_\_\_\_
- Secretary: \_\_\_\_\_
- Treasurer: \_\_\_\_\_
- Other: \_\_\_\_\_
15. Names, addresses and percentage of voting stock held by stockholders (other than officers) holding 10% or more of the voting stock:
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
16. Total capitalization: \$ \_\_\_\_\_
- Amount of capital stock subscribed: \$ \_\_\_\_\_
- Amount paid in: \$ \_\_\_\_\_

**D. INFORMATION TO BE SUPPLIED BY PARTNERSHIPS OR JOINT VENTURES ONLY:**

(Items 17 through 21)

17. Date of organization: \_\_\_\_\_
18. General or Limited Partnership? \_\_\_\_\_
19. Agreement Recorded: \_\_\_\_\_  
(County, State and Date)

20. Registered in Hawaii? \_\_\_\_\_ If so, when?

(Note: All partnerships must be registered in Hawaii and be authorized to operate a marine fueling facility, or similar, retail business prior to the submission of the bid.)

Name, Address and Share of Each Partner:

<u>Name</u>	<u>Address</u>	<u>Share</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

E. OTHER:

The Bidder may attach any other information or data that the Bidder feels may serve to supplement the information contained in the answers and entries made by the Bidder.

The Bidder does hereby consent to and authorize the State to confirm any of the above information with any financial institution and other sources that may be necessary.

The Bidder does hereby expressly agree that in the event any of the above Information is inaccurate or that said Bidder has failed to answer or omitted any pertinent information, the State shall have the right to refuse to receive the Bidder's bid.

#### DECLARATION

I declare that the aforementioned, including any accompanying statements, has been examined by me, and to the best of my knowledge and belief is true, correct and complete.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2010 \_\_\_\_\_

At \_\_\_\_\_.

By \_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF HAWAII

)  
) SS.  
)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010  
before me appeared \_\_\_\_\_  
and \_\_\_\_\_, to me personally known,  
who, being by me duly sworn, did say that they are the  
\_\_\_\_\_ and \_\_\_\_\_  
respectively, of \_\_\_\_\_, and that the seal affixed to the  
foregoing instrument is the corporate seal of said corporation, and that said instrument was  
signed and sealed on behalf of said corporation by authority of its Board of Directors, and the  
said \_\_\_\_\_  
and \_\_\_\_\_ acknowledged that he executed said instrument  
as the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public, \_\_\_\_\_ Judicial  
Circuit, State of Hawaii

My Commission expires: \_\_\_\_\_

## APPENDIX B

### NOTICE OF INTENTION TO BID

Date \_\_\_\_\_

Chairperson Laura H. Thielen  
Board of Land and Natural Resources  
Division of Boating and Ocean Recreation  
333 Queen St., Suite 300  
Honolulu, Hawaii 96813

Dear Chairperson Thielen:

In accordance with the Notice of Public Auction by Sealed Bid and the Instructions to Bidders, it is the intent of the undersigned to submit the enclosed Application and Qualifications form, with attached information for review and prequalification.

This letter of Notification for Intention is being sent to bid on a lease of State land at Heeia-Kea Small Boat Harbor, Honolulu, Hawaii. Only after notification to bid, and qualification approval, do we understand that sealed bids are to be received at the at The Division of Boating and Ocean Recreation at 333 Queen Street, Suite 300, Honolulu, Hawaii, 96813 **no later than 3:00 p.m. Thursday, December 2, 2010.** Bids will be opened at 10:00 A.M. on Friday, December 3, 2010 at the Division of Boating and Ocean Recreation Conference Room. An announcement will be made soon thereafter. Said auction may be cancelled, postponed or continued from time to time by public announcement to that effect by the Chairperson or her representative at the time and place appointed for the auction.

The Lease to be auctioned shall be for three (3) parcels of land, improvements, and a non-exclusive pipeline easement covered by this lease, generally situated at the mole located at Heeia Kea Boat Small Boat Harbor, Heeia, Koolaupoko, Kaneohe, Oahu, Hawaii, being the site presently operated by the Deli Corporation, and further identified within TMK: 4-6-006: Por. 067, are as follows:

- Parcel 1: Containing an area of approximately 980 square feet;
- Parcel 2: Containing an area of approximately 1020 square feet;
- Parcel 3: Containing an area of approximately 2,244 square feet;

Easement: A common, non-exclusive pipeline easement of 970 sq. ft. is provided, for subsurface pipelines, together with a right-of-way for the installation, repair, maintenance and replacement thereof. The land affected by the easement is situated between Parcels 1 and 2 described above;

Improvements: All improvements located on Parcels 1, 2, 3, and the easement are owned by the State, except the fueling equipment, specifically the tanks in

Parcel 2, and the fuel pumps located in Parcel three, which are owned by the present tenant, The Deli Corporation. These may be purchased directly from the Deli Corporation.

The term of the lease shall be thirty-five (35) years. In submitting this Notice of Intention to Bid, with all required information, the undersigned acknowledges that he has received a copy of all bid documents, lease provisions and covenants, application and the Qualification Questionnaire, that he has reviewed and read same, and further agrees that, if he is the successful bidder, he will enter into a lease with the State of Hawaii and comply with all terms, covenants and conditions therein contained.

Very truly yours,

\_\_\_\_\_  
(Name of Firm or Individual)

\_\_\_\_\_  
(Name of Signer)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(Telephone No.)

\_\_\_\_\_  
(Email Address)

Note: This notice together with appropriate clearances as required in the Instructions to Bidders must be sent to the Chairperson at the above address and received on or before 4:00 p.m., Thursday, November 18, 2010.



APPENDIX C

MEMORANDUM OF SALE MADE  
AT PUBLIC AUCTION BY  
SEALED BID

DATE: \_\_\_\_\_

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_

Residence

Business

\_\_\_\_\_  
Email Address

DESCRIPTION: LOCATION: Government reclaimed filled lands and improvements thereon at Heeia, Koolaupoko, Kaneohe, Oahu within the Heeia Small Boat Harbor, being the site presently operated by The Deli Corporation, Inc. under Revocable Permit B-07-31, and further identified by Tax Map Key: (1) 4-6-006: por 067; AREA: Three parcels containing a total of approximately 4,244 square feet reclaimed land and a common non-exclusive easement for subsurface pipelines together with a right of way for the installation, repair, and maintenance.

BID RENTAL: \$ \_\_\_\_\_ UPSET ANNUAL RENTAL: \$24,000.00

(I) (We) hereby agree to rent and lease from the State of Hawaii, and the State of Hawaii agrees to demise and lease to the Lessee(s), the land above described for the bid rental per annum above set forth in accordance with the terms, covenants, and conditions of the published Notice of Sale appearing in the Honolulu Star-Advertiser on Date: October 30, 31, and November 1, 2010, which notice by this reference is incorporated herein and made a part hereof.

\_\_\_\_\_  
LESSEE

\_\_\_\_\_  
LESSEE

\_\_\_\_\_  
Laura H. Thielen  
Chairperson and Member  
Board of Land and Natural Resources

## APPENDIX D

### TAX CLEARANCES

Applicants must submit federal, State and County tax clearance certificates with their completed applications.

An original or certified copy of a tax clearance issued by the Hawaii State Department of Taxation and the Internal Revenue Service must be submitted with this application for the Applicant and all affiliated entities. "Affiliated entities" is defined as any entity having more than fifty percent (50%) interest in the bidding entity; any company more than fifty percent (50%) owned by a company having more than fifty percent (50%) interest in the bidding entity; or any entity in which the bidding entity has more than fifty percent (50%) interest. The bidder shall be responsible for obtaining the verifications for all affiliated companies.

The Applicant shall also obtain and submit the corresponding tax clearance certificates of the applicable County pertaining to property taxes, special assessments or other County obligations.

The tax clearances submitted with your application must be valid on the advertisement date and any date thereafter up to the date of the auction.

### INFORMATION ON OBTAINING TAX CLEARANCES

For information on obtaining Federal and State tax clearances, contact the State Department of Taxation and/or the Internal Revenue Service:

#### State District Tax Offices:

Oahu District Tax Office  
830 Punchbowl Street  
Post Office Box 259  
Honolulu, Hawaii 96809-0259  
Phone: (808) 587-4242  
Toll-free: 1-800-222-3229

Kauai District Tax Office  
3060 Eiwa Street, #105  
Lihue, Hawaii 96766-1889  
Phone: (808) 274-3456

Hawaii District Tax Office  
75 Aupuni Street  
Post Office Box 833  
Hilo, Hawaii 96721-0833  
Phone: (808) 974-6321

Maui District Tax Office  
54 South High Street, Room 208  
Post Office Box 1169  
Wailuku, Hawaii 96793-1169  
Phone: (808) 984-8511

Website: <http://www.state.hi.us/tax/current/a6.pdf>

Internal Revenue Service Tax Clearance Addresses:

**Location:**

Internal Revenue Service  
Prince Jonah Kuhio Federal Bldg.  
300 Ala Moana Blvd., Room 1002  
Honolulu, Hawaii 96813

**Mailing Address:**

Internal Revenue Service  
Collection Division – TC  
300 Ala Moana Blvd., #50089  
Honolulu, Hawaii 96850-4922

For information on obtaining county tax clearances, contact the Real Property Tax Office in your county.

## AFFIDAVIT OF NON-ARREARS

28

## AFFIDAVIT OF NON-ARREARS

\_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_ do hereby under oath solemnly swear that:

(2) said corporation is not in arrears in the payment of taxes, rents or other obligations owing the State of Hawaii or any of its political subdivisions; and (3) said corporation has not during the five (5) years preceding the date of this public auction a previous sale, lease, license, permit or easement covering public lands cancelled for failure to satisfy the terms and conditions thereof.

By:

And by:

Subscribed and sworn to  
before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(CORPORATION)

## AFFIDAVIT OF NON-ARREARS

30

APPENDIX E

AFFIDAVIT OF NON-ARREARS

STATE OF HAWAII

)

: ss.

COUNTY OF

)

\_\_\_\_\_  
of  
\_\_\_\_\_

do hereby under oath solemnly swear that: (1) we are married to each other; (2) we jointly and severally are not in arrears in the payment of taxes, rents or other obligations owing the State of Hawaii or any of its political subdivisions; and (3) neither I nor my spouse, nor both of us, has not during the five (5) years preceding the date of this public auction a previous sale, lease, license, permit or easement covering public lands cancelled for failure to satisfy the terms and conditions thereof.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Subscribed and sworn to  
before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Hawaii

My commission expires:

## AFFIDAVIT OF NON-ARREARS

of

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**My commission expires:**

32



APPENDIX F

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF BOATING AND OCEAN RECREATION

MEMORANDUM OF CHARGES

NAME: \_\_\_\_\_ DATE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

SUBJECT: LOCATION: Government submerged and reclaimed filled lands and improvements thereon at Koolaupoko, Heeia, Kaneohe, Heeia Kea Small Boat Harbor being the site presently operated by The Deli Corporation under Revocable Permit B-03-06, and further identified by Tax Map Key: 4-6-006: ; 4,244 square feet of reclaimed area of Parcels 1,2,& 3: and a non-exclusive easement of 970 square feet.

Upset Annual Rental: \$ 24,000.00

Bid Annual Rental: \$ \_\_\_\_\_

	Charge	Paid	Balance Due
Initial Payment-TBD	\$ __, __.00	\$ __, __.00	\$ __, __.00
Advertising Costs	\$ 1,674.00	\$ __, __.00	\$ __, __.00
Appraisal	\$ 3,330 .00	\$ __, __.00	\$ __, __.00
Total-TBD	\$ __, __.00	\$ __ , __.00	\$ __ , __.00

CASH: \$ \_\_\_\_\_

BANK: \_\_\_\_\_

CHECK NO: \_\_\_\_\_

Note: Lease shall commence as determined by the Chairperson.

**APPENDIX G**

**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF BOATING AND OCEAN RECREATION**

**MAP AND DESCRIPTION**



**STATE OF HAWAII  
SURVEY DIVISION  
DEPT. OF ACCOUNTING AND GENERAL SERVICES  
HONOLULU**

**C.S.F. No. 24, 986**

**September 9, 2010**

**(REVISED – SEPTEMBER 2010)  
HEEIA-KEA SMALL BOAT HARBOR**

**LEASE PARCELS 1, 2 AND PIPELINE EASMENT**

**Heeia, Koolaupoko, Oahu, Hawaii**

**Being portions of the filled land of Kaneohe Bay.**

**Being also portions of Heeia-Kea Small Boat Harbor, Governor's  
Executive Order 4325.**

**PARCEL 1**

**Beginning at the east corner of this parcel of land, the true azimuth  
and distance from the east corner of Heeia-Kea Small Boat Harbor, Governors Executive  
Order 4325 being: 103° 18' 396.00 feet, the coordinates of said point of beginning  
referred to Government Survey Triangulation Station "HEEIA" being 335.44 feet South  
and 4383.24 feet East, thence running by azimuths measured clockwise from True  
South:-**

September 9, 2010

- |    |          |   |
|----|----------|---|
| 1. | 53° 40'  | 28.00 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325;   |
| 2. | 142° 30' | 35.00 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325;   |
| 3. | 233° 40' | 28.00 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325;   |
| 4. | 322° 30' | 35.00 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325 to the point of beginning and containing an AREA OF 980 SQUARE FEET. |

**PARCEL 2**

Beginning at the southwest corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HEEIA" being 211.28 feet South and 4295.39 feet East, thence running by azimuths measured clockwise from True South:-

- |    |          |   |
|----|----------|---|
| 1. | 168° 44' | 48.04 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325; |
| 2. | 258° 44' | 20.00 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325; |
| 3. | 348° 44' | 54.00 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325; |

4. 95° 20' 20.87 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325 to the point of beginning and containing an AREA OF 1020 SQUARE FEET.

**PIPELINE EASEMENT**

Beginning at the northwest corner of this easement being also the initial point of beginning of the above-described Lease Parcel 2, thence running by azimuths measured clockwise from True South:-

1. 275° 20' 6.22 feet along Lease Parcel 2 of Heeia-Kea Small Boat Harbor;
2. 348° 44' 78.00 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325;
3. 290° 00' 40.00 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325;
4. 233° 40' 2.54 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325;
5. 322° 30' 9.00 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325;
6. 53° 40' 28.00 feet along Lease Parcel 1 of Heeia-Kea Small Boat Harbor;

C.S.F. No. 24, 986

September 9, 2010

- |     |          |   |
|-----|----------|---|
| 7.  | 142° 30' | 9.00 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325;  |
| 8.  | 233° 40' | 18.25 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325;   |
| 9.  | 110° 00' | 39.33 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325;   |
| 10. | 168° 44' | 83.18 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325 to the point of beginning and containing an AREA OF 970 SQUARE FEET. |

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

By: Gerald Z. Yonashiro  
Gerald Z. Yonashiro  
Land Surveyor ry

Compiled from CSF 24885 and  
other Govt. Survey Records.



**STATE OF HAWAII  
SURVEY DIVISION  
DEPT. OF ACCOUNTING AND GENERAL SERVICES  
HONOLULU**

C.S.F. No. 24,987

September 9, 2010

**(REVISED – SEPTEMBER 2010)  
HEEIA-KEA SMALL BOAT HARBOR**

**LEASE PARCEL 3**

**Heeia, Koolaupoko, Oahu, Hawaii**

**Being a portion of the filled land of Kaneohe Bay.**

**Being also a portion of Heeia-Kea Small Boat Harbor, Governor's  
Executive Order 4325.**

**Beginning at the northeast corner of this parcel of land, the  
coordinates of said point of beginning referred to Government Survey Triangulation  
Station "HEEIA" being 194.14 feet South and 4374.09 feet East, thence running by  
azimuths measured clockwise from True South:-**

- 1.    348° 46'                      66.00 feet along the remainder of Heeia-Kea Small  
   Boat Harbor, Governor's Executive Order  
   4325;**
- 2.    78° 46'                      34.00 feet along the remainder of Heeia-Kea Small  
   Boat Harbor, Governor's Executive Order  
   4325;**

C.S.F. No. 24, 987

September 9, 2010

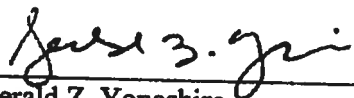
3. 168° 46'

66.00 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325;

4. 258° 46'

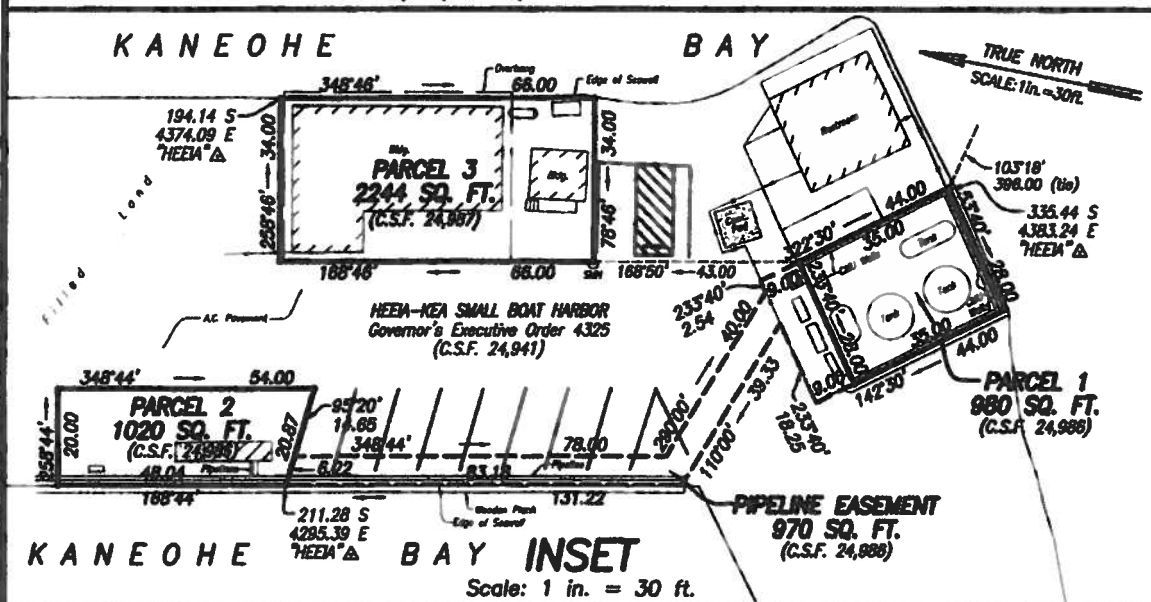
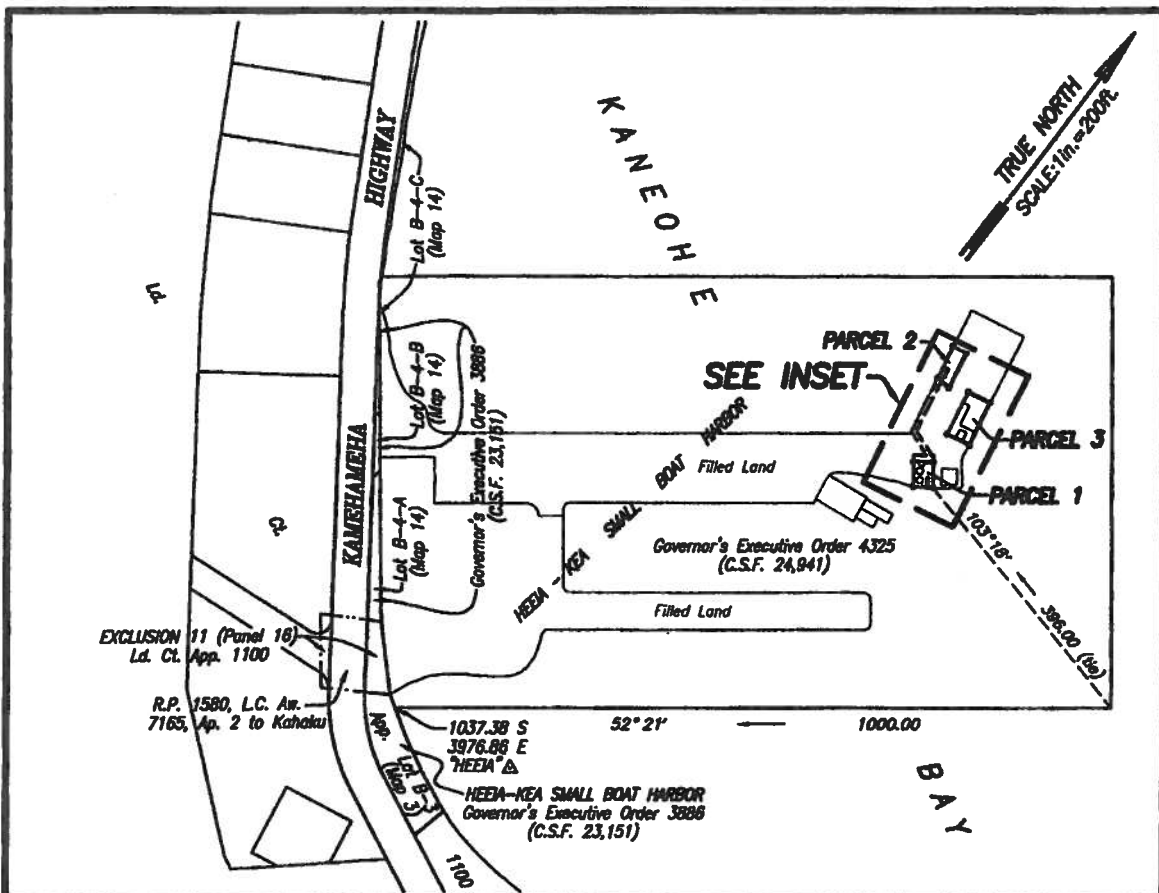
34.00 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325 to the point of beginning and containing an AREA OF 2244 SQUARE FEET.

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

By:   
Gerald Z. Yonashiro  
Land Surveyor ry

Compiled from CSF 24886 and  
Other Govt. Survey Records.





**(REVISED - SEPTEMBER 2010)**  
**HEEIA-KEA SMALL BOAT HARBOR**  
**LEASE PARCELS 1, 2, 3 AND PIPELINE EASEMENT**

JOB O-142(09)  
 C. BK. IBM C.F. 4-G

Heeia, Koolaupoko, Oahu, Hawaii

TAX MAP 4-6-08

**SURVEY DIVISION**  
**DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES**  
**STATE OF HAWAII**

C.S.F. NOS. 24,988  
 24,987

G2Y September 9, 2010

**APPENDIX H**

**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF BOATING AND OCEAN RECREATION**

**DRAFT LEASE DOCUMENT**

[illegible]

Tax Map Key No. (1)4-6-006:Por. 067

DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF BOATING AND OCEAN RECREATION

Parcel 1 containing an area of 980 square feet,  
Parcel 2 containing an area of 1,020 square feet,  
Parcel 3 containing an area of 2,244 square feet, and  
Pipeline Easement containing an area of 970 square feet

## TABLE OF CONTENTS

	<u>Page</u>
TERM OF LEASE .....	1
ANNUAL RENTAL .....	1
REOPENING OF ANNUAL RENTAL .....	4
INTEREST RATE/SERVICE CHARGE .....	5
RESERVATIONS:	
1. Minerals and waters .....	5
2. Ownership of improvements .....	5
AGREEMENTS AND COVENANTS BETWEEN PARTIES:	
1. Payment of rent .....	7
2. Taxes, assessments, etc.....	7
3. Utility services .....	7
4. Covenant against discrimination .....	7
5. Sanitation .....	7
6. Waste and unlawful, improper or offensive use of premises .....	7
7. Compliance with laws .....	8
8. Inspection of premises .....	8
9. Improvements .....	8
10. Repairs to improvements .....	8
11. Liens .....	8
12. Character of use .....	8
13. Assignments, etc.....	9
14. Subletting .....	9
15. Indemnity .....	10
16. Costs of litigation .....	10
17. Liability insurance .....	10
18. Bond, performance .....	11
19. Lessor's lien .....	12
20. Mortgage .....	12
21. Breach .....	13
22. Right of holder of record of a security interest .....	13
23. Condemnation .....	14
24. Right to enter .....	15
25. Inspection by prospective bidders .....	15

# TABLE OF CONTENTS (cont'd)

	<u>Page</u>
26. Acceptance of rent not a waiver .....	15
27. Extension of time .....	15
28. Justification of sureties .....	15
29. Waiver, modification, reimposition of bond and liability insurance provisions .....	16
30. Quiet enjoyment .....	16
31. Surrender .....	17
32. Non-warranty .....	17
33. Hazardous materials .....	17
34. Hawaii law .....	18
35. Exhibits - Incorporation in lease .....	18
36. Headings .....	18
37. Partial invalidity .....	18
38. Time is of the essence .....	18
39. Historic preservation .....	18
40. Incorporation by reference .....	18
 SPECIAL CONDITIONS:	
41. Improvements .....	19
42. Bond, improvement .....	19
43. Fire and extended coverage insurance .....	19
44. Environmental regulations .....	20
45. Phase I environmental site assessment .....	20
46. Additional required services .....	20
DEFINITIONS .....	21
SIGNATURE PAGE .....	22
ACKNOWLEDGMENT PAGE .....	23



STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF BOATING AND OCEAN RECREATION

GENERAL LEASE NO. B-0000

THIS LEASE, made this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by and between the STATE OF HAWAII, hereinafter referred  
to as the "Lessor," by its Board of Land and Natural Resources,  
called the "Board," and SALE AT PUBLIC AUCTION  
whose address is \_\_\_\_\_,  
referred to as the "Lessee."

WITNESSETH:

The Lessor, pursuant to Section 171-35, Hawaii Revised Statutes, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the Lessee to be kept, observed and performed, does lease unto the Lessee, and the Lessee does lease from the Lessor the premises situate at Heeia, Koolaupoko, Oahu, Hawaii, and identified as "Heeia-Kea Small Boat Harbor Lease," Parcel 1 containing an area of 980 square feet, Parcel 2 containing an area of 1,020 square feet, Parcel 3 containing an area of 2,244 square feet, and Pipeline Easement containing an area of 970 square feet, more particularly described in Exhibits "A" and "B," and all as shown on the map marked Exhibit "C," attached hereto and made parts hereof. Said premises are a portion of Governor's Executive Order No. 4325.

TO HAVE AND TO HOLD the premises unto the Lessee for the term of thirty-five (35) years, commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, up to and including the \_\_\_\_\_ day of \_\_\_\_\_, unless sooner terminated as hereinafter provided, the Lessor reserving and the Lessee yielding and paying to the Lessor at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, State of Hawaii, payment of rent as provided hereinbelow:

A. Annual Rent. The greater of the minimum annual base rent or annual percentage rent, if any.

B. Minimum Annual Base Rent.

1. Minimum annual base rent for the first five (5) years shall be \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) per annum.

2. Fixed increases in minimum annual base rent.

a. Minimum annual base rent for years six (6) through ten (10) shall be equal to the fifth year's minimum annual base rent multiplied by 1.05, and shall be in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_) per annum.

b. Minimum annual base rent for years eleven (11) through fifteen (15) shall be equal to the tenth year's minimum annual base rent multiplied by 1.05, and shall be in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_) per annum.

3. Minimum annual base rent shall be payable in advance, without notice or demand, in equal monthly installments on \_\_\_\_\_ of each and every month.

C. Percentage Rent.

1. Percentage rent shall be based on the gross revenues from all commercial uses of the subject property.

2. Percentage rent for the first fifteen (15) years shall be equal to five percent (5.0%) of the annual gross revenues from the premises.

3. The gross revenues shall include all revenues generated from, on, or within the premises, including the gross revenues of any sublessee.

4. Percentage rent shall be payable quarterly in arrears, without notice or demand, no later than thirty (30) days after March 31, June 30, September 30, and December 31 of each year, provided, however, that the Chairperson may extend the deadline for payment of percentage rents for good cause. Each payment of percentage rent shall be accompanied by a written statement certified as correct by Lessee, or a person duly authorized by Lessee, showing in accurate detail the amount of

gross receipts, by category, for the payment period. Lessor may, in Lessor's sole discretion, specify the format and details required in Lessee's written statement of gross receipts

5. Lessee shall at all times keep and maintain accurate records of all business transactions and sales made in and from the premises, including records of business transactions and sales made by sublessees. Lessor shall have the right at all reasonable times during business hours, through Lessors' duly authorized agent, attorney, or accountant, to inspect and make copies of Lessee's records, accounts, and books in any way bearing on such sales (including copies of tax or information returns furnished any governmental authority), at the premises or at any other office of Lessee at which such books, records, and accounts may be kept, and to inspect the records, accounts and books in any way bearing on sales of any other person or firm selling goods or services in or from any part of the premises. Lessor shall have the right to require Lessee to prepare and provide, at Lessee's sole expense, financial statements prepared according to generally accepted accounting principles and covering any fiscal year. All such information shall be held by Lessor, its agents, attorneys, and accountants in strictest confidence to the extent permitted by law.

6. If an audit discloses that Lessee has underpaid the percentage rent due for any period, Lessor shall notify Lessee in writing of such deficiency and upon such notification the deficient amount shall be immediately due and payable by Lessee. If an audit by Lessor's accountant or by a licensed independent certified public accountant retained by Lessor shall disclose that rent has been underpaid by two percent (2%) or more for any period under examination, Lessor, in addition to any other remedies available in this lease or otherwise, shall be entitled to reimbursement by Lessee of all costs and expenses incurred in completing any such audit in addition to any deficiency (together with applicable interest, service charge and other charges) revealed or disclosed.

7. If an audit discloses that Lessee has overpaid the percentage rent due for any period, Lessor shall notify Lessee in writing of such overpayment. Overpaid amounts shall be credited to and set off against rental amounts next due and payable following the date that such overpayment is discovered or revealed. If the lease is in its final year, such overpayment shall be reimbursed to the Lessee, after deducting any amounts due to Lessor.

8. The percentage rent rate shall remain constant



throughout the first fifteen (15) years of the lease term.

D. Rent waiver. For the first (1st) year, the annual base rent is waived, however the Lessee shall pay, on a quarterly basis as described above, the gross percentage fees of five percent (5%) collected during the first year.

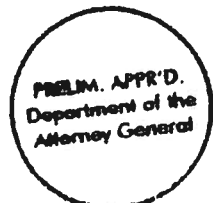
E. The annual rental reserved shall be reopened and redetermined on the fifteenth (15th) and twenty-fifth (25<sup>th</sup>) years.

F. Determination of base rent and percentage rent upon reopening. The base rent and percentage rent for any ensuing period shall be the fair market rental at the time of reopening. At least six months prior to the time of reopening, the fair market rental, which must include both base rent and percentage rent, shall be determined by:

(1) An employee of the Department of Land and Natural Resources qualified to appraise lands; or

(2) A disinterested appraiser whose services shall be contracted for by the Board. Lessee shall be notified of the determination by certified mail, return receipt requested.

Lessee must notify Lessor in writing within thirty (30) days after receipt of the determination that Lessee disagrees with the fair market rental as determined by the Board's appraiser and that Lessee has appointed its own appraiser, whose name and address shall be stated in the notice. The determination shall be deemed received by Lessee on the date the Lessee signs the return receipt or three (3) days after mailing, whichever occurs first. Within sixty (60) days of Lessor's receipt of Lessee's notification, Lessee's appraiser and the Board's appraiser shall appoint a third appraiser, unless Lessee's appraiser and the Board's appraiser have agreed upon the fair market rental, and the fair market rental shall be determined by arbitration as provided in chapter 658A, Hawaii Revised Statutes. The Lessee shall pay for the Lessee's own appraiser, the Board shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by the Lessee and the Board. In the event that the fair market rental is not finally determined before the reopening date, the Lessee shall pay the rental as determined by the Board's appraiser until the new rent is determined, and the rental paid by Lessee shall then be subject to retroactive adjustments as appropriate.



Should the Lessee fail to notify Lessor in writing within thirty (30) days after receipt of the determination that Lessee disagrees with the fair market rental as determined by the Board's appraiser and that Lessee has appointed its own appraiser, then the fair market rental as determined by the Board's appraiser shall be deemed to have been accepted by Lessee and shall be the fair market rental as of the date of reopening.

G. The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) a month for each delinquent payment.

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters. (a) All minerals as hereinafter defined, in, on or under the premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means whatsoever, including strip mining. "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the Lessee's permitted activities on the premises and not for sale to others. (b) All surface and ground waters appurtenant to the premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the premises required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of Lessee's improvements taken.

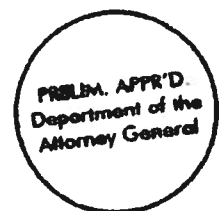
2. Ownership of improvements. The ownership of all improvements of whatever kind or nature, including but not limited to fences and stockwater system(s) located on the land prior to or on the commencement date of this lease. The provisions of this paragraph shall not apply to fueling equipment (including but not limited to pumps, storage tanks, pipes, and meters) or to any improvements constructed by Lessee during the

term of this lease, ownership of which is governed by paragraph 9 below.

SUBJECT TO the rights of native tenants and to regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law including chapter 6E, Hawaii Revised Statutes, over prehistoric or historic remains found in, on, or under the land.

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Payment of rent. The Lessee shall pay the rent to the Lessor at the times, in the manner and form provided in this lease and at the place specified above, or at any other place the Lessor may from time to time designate, in legal tender of the United States of America.
2. Taxes, assessments, etc. The Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, and assessments of every description as to which the premises or any part, or any improvements, or the Lessor or Lessee, are now or may be assessed or become liable by authority of law during the term of this lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only those installments, together with interest, which becomes due and payable during the term of this lease.
3. Utility services. The Lessee shall be responsible for obtaining any utility services and shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges, as to which the premises or any part, or any improvements, or the Lessor or Lessee may become liable for during the term, whether assessed to or payable by the Lessor or Lessee.
4. Covenant against discrimination. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.
5. Sanitation. The Lessee shall keep the premises and improvements in a strictly clean, sanitary and orderly condition.
6. Waste and unlawful, improper or offensive use of premises. The Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip, or unlawful, improper or offensive use of the premises or any part, nor, without the prior written consent of the Lessor, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on the premises.



7. Compliance with laws. The Lessee shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the premises, now in force or which may be in force.

8. Inspection of premises. The Lessee shall permit the Lessor and its agents, at all reasonable times during the lease term, to enter the premises and examine the state of its repair and condition.

9. Improvements. The Lessee shall not at any time during the term construct, place, or install on the premises any building, structure or improvement of any kind and description except with the prior written approval of the Chairperson and upon those conditions the Chairperson may impose, including any adjustment of rent. The Lessee shall own any improvements constructed by lessee and the fueling equipment (including but not limited to pumps, storage tanks, pipes, and meters) until the expiration or other termination of the lease, at which time the ownership shall, at the option of the Lessor, remain and become the property of the Lessor or shall be removed by Lessee at Lessee's sole cost and expense.

10. Repairs to improvements. The Lessee shall, at its own expense, keep, repair, and maintain all buildings and improvements now existing or hereafter constructed or installed on the premises in good order, condition and repair, reasonable wear and tear excepted.

11. Liens. The Lessee shall not commit or suffer any act or neglect which results in the premises, any improvement, or the leasehold estate of the Lessee becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this lease, and shall indemnify, defend, and hold the Lessor harmless from and against all attachments, liens, charges, and encumbrances and all resulting expenses.

12. Character of use. The Lessee shall use or allow the premises leased to be used solely for the following purposes: Parcel 1 for petroleum storage tanks and facilities and a waste oil containment system, Parcel 2 for dockside fueling operations and sewage pump-out system, and Parcel 3 for convenience store, ship chandlery, over-the-counter snack bar and ice house, and the non-exclusive easement for subsurface pipelines for the transmission of petroleum products only and as a right-of-way for the installation, repair, maintenance and replacement of said



subsurface pipeline purposes.

13. Assignments, etc. The Lessee shall not transfer, assign, or permit any other person to occupy or use the premises, or any portion, or transfer or assign this lease or any interest, either voluntarily or by operation of law, except by way of devise, bequest, or intestate succession, and any transfer or assignment made shall be null and void; provided that with the prior written approval of the Board the assignment and transfer of this lease, or any portion, may be made in accordance with current industry standards, as determined by the Board; provided, further, that prior to the approval of any assignment of lease, the Board shall have the right to review and approve the consideration paid by the Assignee and may condition its consent to the assignment of the lease on payment by the Lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the straight-line depreciated cost of improvements and trade fixtures being transferred to the Assignee pursuant to the Assignment of Lease Evaluation Policy adopted by the Board on December 15, 1989, as amended, a copy of which is attached hereto as Exhibit "D." The premium on any subsequent assignments shall be determined as specified in the above-mentioned Evaluation Policy.

With respect to state agricultural leases, in the event of foreclosure or sale, the above-described premium shall be assessed only after the encumbrances of record and any other advances made by the holders of a security interest are paid.

If the Lessee is a partnership, joint venture or corporation, the sale or transfer of 20% or more of ownership interest or stocks by dissolution, merger or any other means shall be deemed an assignment for purposes of this paragraph and subject to the right of the Lessor to impose the foregoing premium as set forth in Exhibit "D."

14. Subletting. The Lessee shall not rent or sublet the whole or any portion of the premises, without the prior written approval of the Board; provided, however, that prior to this approval, the Board shall have the right to review and approve the rent to be charged to the proposed sublessee and that in the case where the Lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublessee or any subsequent sublessees shall be included as part of the Lessee's gross receipts, and the Board shall have the right to revise the rent for the premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided, further, that the rent may not be

revised downward. For good cause, the Board may waive the requirement that the Lessee obtain prior written approval to rent or sublet all or any portion of the premises.

15. Indemnity. The Lessee shall indemnify, defend, and hold the Lessor harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of Lessee relating to Lessee's use, occupancy, maintenance, or enjoyment of the premises; 2) any failure on the part of the Lessee to maintain the premises and sidewalks, roadways and parking areas adjacent thereto in Lessee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Lessee's non-observance or non-performance of any of the terms, covenants, and conditions of this lease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

16. Costs of litigation. In case the Lessor shall, without any fault on Lessor's part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this lease, in recovering possession of the premises, or in the collection of delinquent rental, taxes, and any and all other charges.

17. Liability insurance. The Lessee shall procure and maintain, at its cost and expense and acceptable to the Lessor, in full force and effect throughout the term of this lease, comprehensive general liability insurance, or its equivalent, with an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A-" or other comparable and equivalent industry rating, in an amount of at least \$1,000,000.00 for each occurrence and \$2,000,000.00 aggregate, and with coverage terms acceptable to the Chairperson of the Board. The policy or policies of insurance shall name the State of Hawaii as an additional insured and a copy shall be filed with the State of Hawaii, Department of Land and Natural Resources. The insurance shall cover the entire premises, including all buildings,

improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the use or control of the Lessee.

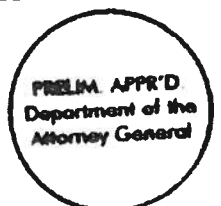
The Lessee, prior to entry and use of the premises or within fifteen (15) days from the effective date of this lease, whichever is sooner, shall furnish the Lessor with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire lease term, and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the Lessor. The Lessor may at any time require the Lessee to provide Lessor with copies of the insurance policy(s) that are or were in effect during the lease period.

The Lessor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this lease. If, in the opinion of the Lessor, the insurance provisions in this lease do not provide adequate protection for the Lessor, the Lessor may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Lessor's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Lessor shall notify Lessee in writing of changes in the insurance requirements and Lessee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Lessor incorporating the changes within thirty (30) days of receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Lessee's liability under this lease nor to release or relieve the Lessee of the indemnification provisions and requirements of this lease. Notwithstanding the policy(s) of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by Lessee's negligence or neglect connected with this lease.

It is agreed that any insurance maintained by the Lessor will apply in excess of, and not contribute with, insurance provided by Lessee's policy.

18. Bond, performance. The Lessee shall, at its own cost and expense, within fifteen (15) days from the effective date of this lease, procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease a good and sufficient surety bond, conditioned upon the





full and faithful observance and performance by Lessee of all the terms, conditions, and covenants of this lease, in an amount equal to two times the annual rental then payable. This bond shall provide that in case of a breach or default of any of the lease terms, covenants, conditions, and agreements, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty.

19. Lessor's lien. The Lessor shall have a lien on all the buildings and improvements placed on the premises by the Lessee, on all property kept or used on the premises, whether the same is exempt from execution or not and on the rents of all improvements and buildings located on the premises for all Lessor's costs, attorney's fees, rent reserved, for all taxes and assessments paid by the Lessor on behalf of the Lessee, and for the payment of all money provided in this lease to be paid by the Lessee, and this lien shall continue until the amounts due are paid.

20. Mortgage. Except as provided in this lease, the Lessee shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this lease without the prior written approval of the Chairperson and any mortgage, hypothecation, or pledge without the approval shall be null and void.

Upon due application and with the written consent of the Chairperson, the Lessee may mortgage this lease, or any interest, or create a security interest in the leasehold of the public land. If the mortgage or security interest is to a recognized lending institution in either the State of Hawaii or elsewhere in the United States, the consent may extend to foreclosure and sale of Lessee's interest at the foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified to lease, own, or otherwise acquire and hold the land or any interest. The interest of the mortgagee or holder shall be freely assignable. The term "holder" shall include an insurer or guarantor of the obligation or condition of the mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other Federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of

these Federal agencies.

21. Breach. Time is of the essence in this agreement. If the Lessee shall fail to pay the rent, or any part thereof, at the times and in the manner provided in this lease and this failure shall continue for a period of more than thirty (30) days after delivery by the Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Lessee and to each holder of record having a security interest in the premises, or if the Lessee shall become bankrupt, or shall abandon the premises, or if this lease and premises shall be attached or taken by operation of law, or if any assignment is made of the Lessee's property for the benefit of creditors, or if Lessee shall fail to observe and perform any of the covenants, terms, and conditions contained in this lease and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Lessee at its last known address and to each holder of record having a security interest in the premises, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of termination, at the option of the Lessor, all buildings and improvements shall remain and become the property of the Lessor or shall be removed by Lessee; furthermore, Lessor shall retain all rent paid in advance to be applied to any damages.

22. Right of holder of record of a security interest. In the event the Lessor seeks to forfeit the privilege, interest, or estate created by this lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach of rent payment within thirty (30) days or any other default or breach within sixty (60) days, from the date of receipt of the Lessor's notice, or within an additional period allowed by Lessor for good cause, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Lessor may: (a) pay to the holder from any moneys at its disposal, including the special land and development fund, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest, or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, the Lessor shall

be entitled to the conveyance of the privilege, interest, or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to the State, then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default and use its best efforts to dispose of the affected land to a qualified and responsible person free and clear of the mortgage and the debt secured; provided that a reasonable delay by the Lessor in instituting or prosecuting its rights or remedies shall not operate as a waiver of these rights or to deprive it of a remedy when it may still otherwise hope to resolve the problems created by the breach or default. The proceeds of any disposition shall be applied, first, to reimburse the Lessor for costs and expenses in connection with the disposition; second, to discharge in full any unpaid purchase price or other indebtedness owing the Lessor in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent of the value received by the State upon disposition which exceeds the fair market lease value of the land as previously determined by the State's appraiser; and fourth, to the owner of the privilege, interest, or estate.

23. Condemnation. If at any time, during the term of this lease, any portion of the premises should be condemned, or required for public purposes by any county or city and county, the rent shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which Lessee is not permitted to harvest and (b) the proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease; provided, that the Lessee may, in the alternative, remove and relocate its improvements to the remainder of the premises occupied by the Lessee. The Lessee shall not by reason of the condemnation be entitled to any claim against the Lessor for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which Lessee may be entitled by law. Where the portion taken renders the remainder unsuitable for the use or uses for which the premises

were leased, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability; provided, that Lessee may remove the permanent improvements constructed, erected and placed by it within any reasonable period allowed by the Lessor.

24. Right to enter. The Lessor or the County and their agents or representatives shall have the right to enter and cross any portion of the premises for the purpose of performing any public or official duties; provided, however, in the exercise of these rights, the Lessor or the County shall not interfere unreasonably with the Lessee or Lessee's use and enjoyment of the premises.

25. Inspection by prospective bidders. The Lessor shall have the right to authorize any person or persons to enter upon and inspect the premises at all reasonable times following a published notice for its proposed disposition for purposes of informing and apprising that person or persons of the condition of the premises preparatory to the proposed disposition; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to the Lessee, and shall, if the Lessee so requires, be made in the company of the Lessee or designated agents of the Lessee; provided, further, that no authorization shall be given more than two years before the expiration of the term of this lease.

26. Acceptance of rent not a waiver. The acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant, or condition of this lease, nor of the Lessor's right of re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any breach, and the failure of the Lessor to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option.

27. Extension of time. Notwithstanding any provision contained in this lease, when applicable, the Board may for good cause shown, allow additional time beyond the time or times specified in this lease for the Lessee to comply, observe, and perform any of the lease terms, conditions, and covenants.

28. Justification of sureties. Any bonds required by this lease shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified

to do business in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, Hawaii Revised Statutes; provided, however, the Lessee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the Lessor security in certified checks, certificates of deposit (payable on demand or after a period the Lessor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to the Lessor a deed or deeds of trust of real property, all of a character which is satisfactory to Lessor and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value of any securities which may be accepted and at any time thereafter held by the Lessor shall be determined by the Lessor, and that the Lessee may, with the approval of the Lessor, exchange other securities or money for any of the deposited securities if in the judgment of the Lessor the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Lessee, but only upon the written consent of the Lessor and that until this consent is granted, which shall be discretionary with the Lessor, no surety shall be released or relieved from any obligation.

29. Waiver, modification, reimposition of bond and liability insurance provisions. Upon substantial compliance by the Lessee with the terms, covenants, and conditions contained in this lease on its part to be observed or performed, the Lessor at its discretion may in writing, waive or suspend the performance bond or improvement bond requirements or both or may, in writing, modify the particular bond(s) or liability insurance requirements by reducing its amount; provided, however, that the Lessor reserves the right to reactivate the bonds or reimpose the bond(s) or liability insurance in and to their original tenor and form at any time throughout the term of this lease.

30. Quiet enjoyment. The Lessor covenants and agrees with the Lessee that upon payment of the rent at the times and in the manner provided and the observance and performance of these covenants, terms, and conditions on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess, and enjoy the premises for the term of the lease, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through, or under it.

31. Surrender. The Lessee shall, at the end of the term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the premises in a clean and orderly condition, together with all improvements existing or constructed thereon or Lessee shall remove such improvements, at the option of the Lessor. Furthermore, upon the expiration, termination, or revocation of this lease, should the Lessee fail to remove any and all of Lessee's personal property from the premises, after notice thereof, the Lessor may remove any and all personal property from the premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Lessee, and the Lessee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the lease.

32. Non-warranty. The Lessor does not warrant the conditions of the premises, as the same are being leased as is.

33. Hazardous materials. Lessee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Lessee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the premises any such materials except to use in the ordinary course of Lessee's business, and then only after written notice is given to Lessor of the identity of such materials and upon Lessor's consent which consent may be withheld at Lessor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Lessee, then the Lessee shall be responsible for the reasonable costs thereof. In addition, Lessee shall execute affidavits, representations and the like from time to time at Lessor's request concerning Lessee's best knowledge and belief regarding the presence of hazardous materials on the premises placed or released by Lessee.

Lessee agrees to indemnify, defend, and hold Lessor harmless, from any damages and claims resulting from the release of hazardous materials on the premises occurring while Lessee is in possession, or elsewhere if caused by Lessee or persons acting under Lessee. These covenants shall survive the expiration or earlier termination of the lease.

For the purpose of this lease "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or

pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

34. Hawaii law. This lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.

35. Exhibits - Incorporation in lease. All exhibits referred to are attached to this lease and hereby are deemed incorporated by reference.

36. Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe or limit the scope or intent of any provision of this lease.

37. Partial invalidity. If any term, provision, covenant or condition of this lease should be held to be invalid, void or unenforceable, the remainder of this lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

38. Time is of the essence. Time is of the essence in all provisions of this lease.

39. Historic preservation. In the event any historic properties or burial sites, as defined in section 6E-2, Hawaii Revised Statutes, are found on the premises, the Lessee and the Lessee's agents, employees and representatives shall immediately stop all land utilization or work or both and contact the Historic Preservation Office in compliance with chapter 6E, Hawaii Revised Statutes.

40. Incorporation by reference. References in this lease to various parcels of land are in accordance with those designated in the Notice of Sale and the Conduct of Sale which, together with the Special Notice to Bidders, are incorporated and made a part of this lease. The terms of this lease shall govern where there is any inconsistency between the lease terms and the terms contained in the Special Notice to Bidders.

## SPECIAL CONDITIONS

41. Improvements. The Lessee shall, at its own cost and expense, procure and provide fueling equipment (including but not limited to pumps, storage tanks, pipes, and meters). Lessee may meet this requirement by either 1) purchasing fueling equipment already in place from the owner of that equipment or 2) building and installing its own fueling equipment. If Lessee elects the second option, then it shall within six months of removal of existing equipment, complete the construction and installation of fueling equipment in accordance with plans and specifications submitted by the Lessee to and approved in writing by the Chairperson and in full compliance with all applicable laws, ordinances, rules and regulations.

42. Bond, improvement. The Lessee, within sixty (60) days of the submittal and written approval of the construction plan referred to in paragraph 41 or any other construction repair, or improvement authorized, required, or approved by this lease, shall procure and deposit with the Lessor a surety bond, acceptable to the Chairperson, in an amount equal to the cost of the work, which bond shall name the State as obligee, conditioned upon the faithful observance and performance of the work, the completion of the work on or before the specified date of completion free from all liens and claims, and that the Lessee shall indemnify, defend, and hold the State harmless from all liens, suits, actions or damages arising out of, caused from or attributable to the work.

43. Fire and extended coverage insurance. The Lessee, at its cost and expense, shall procure and maintain at all times during the term of this lease, fire and extended coverage insurance with an insurance company(s) licensed to do business in the State of Hawaii, insuring all buildings and improvements erected on the leased land in the joint names of Lessor and Lessee, with the standard mortgage clause for Mortgagee, if any, as their interest may appear, in an amount equal to the replacement cost of the facilities, and shall pay the premiums at the time and place required under the policy.

In the event of total or partial loss, any proceeds derived from the policy(s) shall be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to plans and specifications approved in writing by the Board; provided, however, that with the approval of the Lessor, the Lessee may instead surrender this lease and pay the balance owing on any



mortgage. Upon surrender of the lease, the Lessee shall then receive that portion of the insurance proceeds which the unexpired term of this lease, at the time of the loss or damage, bears to the whole of the term, with the Lessor to be paid the balance of the proceeds.

The Lessee shall furnish the Lessor on or before the commencement date of this lease, a certificate showing the policy(s) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(s). Each certificate(s) shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(s) until after thirty (30) days written notice has been given to the Lessor.

All rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived. 52.

44. Environmental regulations. Lessee shall comply with all applicable federal, state and county environmental impact regulations, including but not limited to chapter 343, Hawaii Revised Statutes, as amended, and regulations governing historic preservation.

45. Phase I environmental site assessment. Prior to termination or revocation of the subject lease or the assignment of the leasehold, Lessee shall conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the Department of Land and Natural Resources. Failure to comply with the provisions of this paragraph shall not extend the term of this lease or automatically prevent termination or revocation of the lease. The Board, at its sole option, may refuse to approve termination, revocation, or assignment unless this evaluation and abatement provision has been performed. In addition or in the alternative, the Board may, at its sole option if Lessee does not do so, arrange for performance of the provisions of this paragraph, all costs and expenses of such performance to be charged to and paid by Lessee.

46. Additional required services. In addition, the bidder shall be responsible for the opening/closing, servicing of supplies, and cleaning of the restroom adjacent to Parcel 1.

Definitions.

1. The use of any gender shall include all genders, and if there is more than one lessee, then all words used in the singular shall extend to and include the plural.

2. As used in this lease, unless clearly repugnant to the context:

(a) "Chairperson" means the Chairperson of the Board of Land and Natural Resources of the State of Hawaii or his successor.

(b) "Lessee" means and includes the Lessee, its officers, employees, invitees, successors or permitted assigns.

(c) "Holder of record of a security interest" means a person who is the owner or possessor of a security interest in the land leased and who has filed with the Department of Land and Natural Resources and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.

(d) "Premises" means the land leased and all buildings and improvements now or hereinafter constructed and installed on the land leased.

(e) "Waste" includes, but is not limited to, (1) permitting the premises, or any portion, to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct the erosion; (2) permitting a substantial increase in noxious weeds in uncultivated portions of the premises; and (3) failure to employ all of the usable portions of the premises.

(f) "Days" shall mean calendar days, unless otherwise specified.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

STATE OF HAWAII

Approved by the Board  
of Land and Natural  
Resources at its meeting  
held on August 14, 2009.

By \_\_\_\_\_  
Chairperson  
Board of Land and  
Natural Resources

LESSOR

SALE AT PUBLIC AUCTION

\_\_\_\_\_  
LESSEE

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

Dated: \_\_\_\_\_



STATE OF HAWAII

COUNTY OF

)  
) SS.  
)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged that \_\_\_\_\_ executed the same as \_\_\_\_\_ free act and deed.

\_\_\_\_\_  
Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_

STATE OF HAWAII

COUNTY OF

)  
) SS.  
)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_ and \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that they are the \_\_\_\_\_ and \_\_\_\_\_, respectively of \_\_\_\_\_, a Hawaii corporation, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and the said \_\_\_\_\_ and \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_

STATE OF HAWAII

COUNTY OF

)  
) SS.  
)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
before me personally appeared \_\_\_\_\_  
and \_\_\_\_\_, to me personally known,  
who, being by me duly sworn or affirmed, did say that such  
person(s) executed the foregoing instrument as the free act and  
deed of such person(s), and if applicable in the capacity shown,  
having been duly authorized to execute such instrument in such  
capacity.

\_\_\_\_\_  
Notary Public, State of Hawaii

\_\_\_\_\_  
My commission expires: \_\_\_\_\_





**STATE OF HAWAII  
SURVEY DIVISION  
DEPT. OF ACCOUNTING AND GENERAL SERVICES  
HONOLULU**

**C.S.F. No. 24, 986**

**September 9, 2010**

**(REVISED - SEPTEMBER 2010)  
HEEIA-KEA SMALL BOAT HARBOR**

**LEASE PARCELS 1, 2 AND PIPELINE EASMENT**

**Heeia, Koolauoko, Oahu, Hawaii**

**Being portions of the filled land of Kaneohe Bay.**

**Being also portions of Heeia-Kea Small Boat Harbor, Governor's  
Executive Order 4325.**

**PARCEL 1**

**Beginning at the east corner of this parcel of land, the true azimuth  
and distance from the east corner of Heeia-Kea Small Boat Harbor, Governors Executive  
Order 4325 being: 103° 18' 396.00 feet, the coordinates of said point of beginning  
referred to Government Survey Triangulation Station "HEEIA" being 335.44 feet South  
and 4383.24 feet East, thence running by azimuths measured clockwise from True  
South:-**



September 9, 2010

1. 53° 40' 28.00 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325;
2. 142° 30' 35.00 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325;
3. 233° 40' 28.00 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325;
4. 322° 30' 35.00 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325 to the point of beginning and containing an AREA OF 980 SQUARE FEET.

**PARCEL 2**

Beginning at the southwest corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HEEIA" being 211.28 feet South and 4295.39 feet East, thence running by azimuths measured clockwise from True South:-

1. 168° 44' 48.04 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325;
2. 258° 44' 20.00 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325;
3. 348° 44' 54.00 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325;

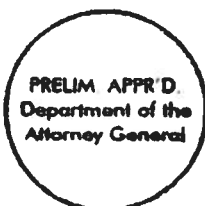
September 9, 2010

4. 95° 20' 20.87 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325 to the point of beginning and containing an AREA OF 1020 SQUARE FEET.

**PIPELINE EASEMENT**

Beginning at the northwest corner of this easement being also the initial point of beginning of the above-described Lease Parcel 2, thence running by azimuths measured clockwise from True South:-

1. 275° 20' 6.22 feet along Lease Parcel 2 of Heeia-Kea Small Boat Harbor;
2. 348° 44' 78.00 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325;
3. 290° 00' 40.00 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325;
4. 233° 40' 2.54 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325;
5. 322° 30' 9.00 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325;
6. 53° 40' 28.00 feet along Lease Parcel 1 of Heeia-Kea Small Boat Harbor;





C.S.F. No. 24, 986

September 9, 2010

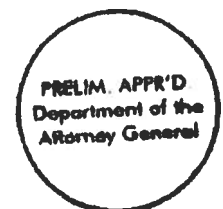
- |     |          |   |
|-----|----------|---|
| 7.  | 142° 30' | 9.00 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325;  |
| 8.  | 233° 40' | 18.25 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325;   |
| 9.  | 110° 00' | 39.33 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325;   |
| 10. | 168° 44' | 83.18 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325 to the point of beginning and containing an AREA OF 970 SQUARE FEET. |

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

By: Gerald Z. Yonashiro  
Gerald Z. Yonashiro  
Land Surveyor

ry

Compiled from CSF 24885 and  
other Govt. Survey Records.





**STATE OF HAWAII  
SURVEY DIVISION  
DEPT. OF ACCOUNTING AND GENERAL SERVICES  
HONOLULU**

**C.S.F. No. 24.987**

**September 9, 2010**

**(REVISED - SEPTEMBER 2010)  
HEEIA-KEA SMALL BOAT HARBOR**

**LEASE PARCEL 3**

**Heeia, Koolaupoko, Oahu, Hawaii**

**Being a portion of the filled land of Kaneohe Bay.**

**Being also a portion of Heeia-Kea Small Boat Harbor, Governor's  
Executive Order 4325.**

**Beginning at the northeast corner of this parcel of land, the  
coordinates of said point of beginning referred to Government Survey Triangulation  
Station "HEEIA" being 194.14 feet South and 4374.09 feet East, thence running by  
azimuths measured clockwise from True South:-**

- 1. 348° 46' 66.00 feet along the remainder of Heeia-Kea Small  
Boat Harbor, Governor's Executive Order  
4325;**
- 2. 78° 46' 34.00 feet along the remainder of Heeia-Kea Small  
Boat Harbor, Governor's Executive Order  
4325;**

**PRELIM APPR'D.  
Department of the  
Attorney General**

C.S.F. No. 24,987

September 9, 2010

3. 168° 46'

66.00 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325;

4. 258° 46'

34.00 feet along the remainder of Heeia-Kea Small Boat Harbor, Governor's Executive Order 4325 to the point of beginning and containing an AREA OF 2244 SQUARE FEET.

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

By: *Gerald Z. Yonashiro*  
Gerald Z. Yonashiro  
Land Surveyor ry

Compiled from CSF 24886 and  
Other Govt. Survey Records.





## ASSIGNMENT OF LEASE EVALUATION POLICY

### 1. Enabling Statute.

Act 104, effective May 24, 1989, amended Chapter 171-36(a)(5) to read in part:

"... provided further that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee;" (revision underlined)

### 2. Qualifying Leases.

This policy shall be applicable to the subject lease.

### 3. Prior Approval.

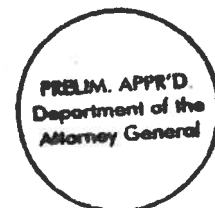
Prior to giving its consent to an assignment, DLNR must receive (i) the name, legal composition and address of any proposed assignee, (ii) a complete copy of the purchase agreement and the proposed assignment agreement, including the total consideration to be paid by the assignee for the assignment whether by cash, credit or otherwise, and (iii) the best available financial statement or balance sheet no older than 1 year prior to date of purchase agreement of the proposed assignee or any other such statement, audited or certified as correct by a financial officer of the proposed assignee.

Assignments of lease shall not be entered into until the Attorney General has reviewed the proposed assignment and the Land Board have given their approval. Such assignments shall be entertained only if they meet the criteria set forth in Section 171-36(a)(5), HRS.

### 4. Qualifications of Assignee.

If qualification was required of a lessee as a pre-condition of the lease, the prospective assignee must also be qualified to assume the lease.

EXHIBIT "D"



5. Consideration to be Paid.

Prior to review by the Attorney General and approval by the Land Board, the lessee (assignor) must present with written evidence of the consideration to be paid by the assignee and any other cost data that the state may require.

6. Payment of Premium.

The act permits the state to receive from the lessee (assignor) a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee. The value of the inventory of merchandise and any other tangible assets in the sale of a business shall be deducted from the consideration paid. The appropriate cost index is then applied to determine the adjusted depreciated cost.

All lessees shall be required to furnish the state with the actual costs of construction of all improvements and renovations within 30 calendar days after its completion as well as the purchase costs of all trade fixtures acquired for the lessee's operation on the premises within 30 calendar days after their purchase. Lessees shall be required to furnish evidence of the actual costs by copy of the construction contract, receipts or otherwise. Lessees shall also be required to furnish an inventory of all personal property placed on the premises. Records of all costs incurred by the lessee for construction of improvements or renovations as well as trade fixtures submitted by the lessee shall be maintained in the lease file and shall include the Construction Cost Index for Apartments, Hotels, Office Buildings (CCI) and the Honolulu Consumer Price Index for All Urban Consumers (CPI) as published by the U.S. Department of Labor, Bureau of Labor Statistics for the year construction is completed.

The replacement cost for improvements or renovations is calculated by using the CCI for the evaluation year divided by the CCI for the year in which the improvements or renovations were completed (base year). The result is then multiplied by the original cost of the improvements or renovations. For trade fixtures, the cost is similarly calculated by using the CPI for the purchase year (base year) and the evaluation year.

Depreciation of improvements and trade fixtures will be determined on a straight line basis. Depreciation of improvements or renovations will be determined in the same



proportion that the expired term of the improvements or renovations bear to the whole term. The whole term will be from the date the construction of the improvements or renovations are completed until the termination date of the lease. Depreciation of trade fixtures will be determined in the same manner, except that the whole term will be the anticipated life of the trade fixture.

The premium will be a maximum of 50% of the excess. The percentage will decrease by 5% after every 5 years of the term has elapsed in accordance with Schedule C. The sliding scale will encourage long term occupancy and prevent speculation as well as recognize the investment, effort, and risk of the lessee.

In cases where the lessee is unable to furnish the Department of Land and Natural Resources with evidence of the actual cost of construction of improvements because the lessee has performed the work itself, the State may determine the cost or the lessee shall have the option of paying for an appraiser, to be selected by the Department of Land and Natural Resources, to determine what the improvements would have cost if the labor had been performed by a third party rather than the lessee. The lessee shall exercise its option by giving written notice to the lessor within thirty (30) calendar days after completion of construction of the improvements. If the lessee fails to exercise its option within this period, the lessor shall have the right to determine the cost of the improvements.

Schedule D attached provides a typical example of the evaluation calculations using Schedule A to calculate the replacement cost for improvements or renovations and depreciation, Schedule B to calculate the cost and depreciation for trade fixtures, and Schedule C to obtain the premium percentage.

7. Non-qualifying Deductions.

The statute only recognizes tangible items. Intangibles such as "goodwill", business name recognition, etc., are not deductible.

8. Subsequent Assignments.

If the consideration for any subsequent assignment includes the purchase of existing tenant owned improvements, the evaluation will be conducted in a similar manner as the first assignment. An example is shown on Schedule E.



Using Schedule E, the consideration the assignor paid less included inventory and any premiums will be used to obtain the adjusted depreciated cost of improvements and trade fixtures. Also, the Base Year is redefined to be the date the assignor received the Consent of the Board to occupy the premises. The holding period (redefined Base Year to assignment date), or actual occupancy of the assignor, is used in place of the "expired term" when calculating depreciation. Depreciation will be calculated by dividing the holding period by the whole term of the lease (The whole term will remain unchanged).

The change in the CCI will be reflected by comparing the CCI for the redefined base year to the most current CCI.

The holding period will be the basis for determining the appropriate premium percentage. Subtracting the included inventory and any premiums from the consideration the assignor paid will result in a reassessment of the market value of the improvements. If additional improvements were constructed by the assignor, they will be treated in the same manner as improvements constructed by an original lessee.

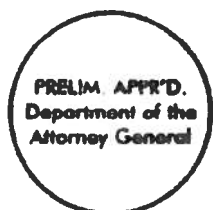
The excess of subtracting the adjusted depreciated consideration the assignor paid and the adjusted depreciated cost of additional improvements, if any, from the consideration the assignor received will be used against the appropriate premium percentage to determine the amount payable to the state.

9. Rights of Holders of Security Interest-Agricultural Leases only.

In the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid.

10. When state-owned improvements are included in the leased premises, improvement renovation requirements shall be recognized as being tenant-owned improvements for evaluation in the policy.

In other words, the total expenditure of the lessee to fulfill the requirement would be treated as though a new improvement was constructed.





SCHEDULE A.      Adjusted Depreciated Cost of Improvements or Renovations

1.    Adjusted Cost of Improvements or Renovations.

Multiply the actual cost of the improvements or renovations by the most recent U.S. Construction Cost Index for Apartments, Hotels, Office Buildings (CCI)\* and divide the result by the CCI of the year construction was completed (base year) to get the adjusted cost of improvements or renovations.

2.    Depreciation

Determine the depreciation percentage on a straight-line basis by dividing the expired term of the improvements or renovations by the whole term of the improvements or renovations, the whole term beginning on the date the improvements or renovations are completed to the expiration date of the lease. Multiply the adjusted cost of the improvements or renovations by the depreciation percentage to determine the depreciation.

3.    Depreciated Cost of Improvements or Renovations

Subtract the depreciation from the adjusted cost of improvements or renovations. The balance is the depreciated cost of improvements or renovations.

\*As published by the U.S. Department of Labor, Bureau of Labor Statistics

Example

	Actual cost:	\$500,000
	CCI (most recent):	121.1
	CCI (base year):	102.3
1.    Adjusted Cost of Improve-	Expired term:	57 mos.
ments or Renovations	Whole term:	408 mos.

Actual Cost X  $\frac{\text{CCI (most recent)}}{\text{CCI (base year)}}$

$$\$500,000 \times \frac{121.1}{102.3} = \$591,887$$

2.    Depreciation

$$\$591,887 \times \frac{57 \text{ mos.}}{408 \text{ mos.}} = \$82,690$$

3.    Adjusted Depreciated Cost of Improvements or Renovations



$$\$591,887 - \$82,690 = \underline{\$509,197}$$

**SCHEDULE B. Adjusted Depreciated Cost of Trade Fixtures**

**1. Adjusted Cost of Trade Fixture.**

Multiply the actual cost of the trade fixture by the most recent Honolulu Consumer Price Index for All Urban Consumers (CPI)\* and divide the result by the CPI of the year in which the purchase was made (base year).

**2. Depreciation.**

Determine the depreciation percentage on a straight-line basis by dividing the expired term of the trade fixture by its anticipated life. Multiply the adjusted cost of the trade fixture by the depreciation percentage to determine the depreciation.

**3. Depreciated Cost of Trade Fixtures.**

Subtract the depreciation from the adjusted cost of the trade fixture. The balance is the depreciated cost of the trade fixture.

\*As published by the U.S. Department of Labor, Bureau of labor Statistics

**Refrigerator**

**Example**

	Actual cost:	\$1,510
	CPI (most recent):	118.1
	CPI (base year):	104.6
1. Adjusted Cost of Trade Fixture	Expired term:	57 mos.
	Whole term:	96 mos.
	(Anticipated life)	

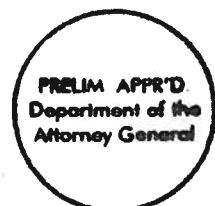
$$\text{Actual Cost} \times \frac{\text{CPI (most recent)}}{\text{CPI (base year)}}$$

$$\$1,510 \times \frac{118.1}{104.6} + \$1,705$$

**2. Depreciation**

$$\$1,705 \times \frac{57 \text{ mos.}}{96 \text{ mos.}} = \$1,012$$

**3. Adjusted Depreciated Cost of Trade Fixture**



\$1,705 - \$1,012 = \$ 693

SCHEDULE C. Premium Percentages

1. For the first 5 years, the premium is 50% of the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee. The percentage will decrease by 5% after every 5 years of the total term has elapsed.

<u>Years</u>	<u>Percentage</u>
1 - 5	50%
6 - 10	45%
11 - 15	40%
16 - 20	35%
21 - 25	30%
26 - 30	25%
31 - 35	20%
36 - 40	15%
41 - 45	10%
46 - 50	5%
51 -	0%

As an example, if a 55 year lease was assigned after 57 months, the premium percentage would be 50%. If the assignment occurs after 130 months (10+ years), the percentage would be 40%.

2. The Board of Land and Natural Resources may impose a ten percent (10%) surcharge if the assignor has not performed lease covenants to improve or use the property.



SCHEDULE D.      Assignment of Lease Calculations

1. Subtract from the consideration for the assignment that amount, if any, that is attributable to inventory.
2. Calculate the Adjusted Depreciated Cost of Improvements or Renovations (see Schedule A).
3. Calculate the Adjusted Depreciated Cost of Trade Fixtures (see Schedule B).
4. Calculate the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee by subtracting the amounts derived by no. 2 and 3 from the amount in no. 1 above.
5. Determine the appropriate premium percentage (see Schedule C). Multiply by the excess, if any, derived by no. 4.

Example

A lease is being assigned 57 months after completion of the improvements at a consideration of \$600,000.

The initial cost of the improvements was \$500,000 while the current year CCI and base year CCI were 121.1 and 102.3, respectively. The whole term for the improvements is 408 months.

For the trade fixtures, the initial cost was \$1,510 with the current year CPI and base year CPI being 118.1 and 104.6, respectively. The total life expectancy is 96 months.

1.	Net Consideration:		\$600,000
2.	Adj Cost Imp/Ren:	\$591,887	
	Depreciation:	<u>- 82,690</u>	
	Adj Dep Cost Imp/Ren:		-509,197
3.	Adj Cost Trade Fixtures:	1,705	
	Depreciation:	<u>- 1,012</u>	
	Adj Dep Cost Trade Fixtures:		- 693
4.	Excess:		\$ 90,110
5.	Premium:	Percentage: 50%	\$ 45,055

SCHEDULE E.

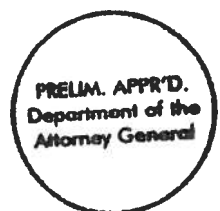
Subsequent Assignment of Lease Calculations

1. Subtract from the consideration the assignor received for the assignment that amount, if any, that is attributable to inventory to derive the net consideration received.
2. Subtract from the consideration the assignor previously paid for the assignment that amount, if any, that was attributable to inventory. Also, subtract from the consideration the assignor previously paid for the assignment that amount, if any, that was attributable to premiums. The net consideration paid is now defined to be the value of improvements as of the date of the occupancy by the assignor.
3. Using the result from no. 2, calculate the Adjusted Depreciated Value of Improvements or Renovations (see Schedule A).
4. Subtract the amount derived by no. 3 from the amount in no. 1 to determine the amount by which the consideration received for the assignment, whether by cash, credit, or otherwise, exceeds the adjusted depreciated value of improvements being transferred to the assignee.
5. Determine the appropriate premium percentage (see Schedule C). Multiply by the excess, if any, derived by no. 4.

Example

An assignor is assigning a lease 107 months after receiving the consent of the Board. Occupancy or the holding period is defined to be 107 months. The consideration received is \$1,000,000.

The consideration paid by the assignor was \$600,000 while the current year CCI and redefined base year CCI were 156.4 and 121.1, respectively. The whole term was 408 months.



No inventory was included in either consideration. However, a premium of \$45,055 was paid to the state by the previous occupant from the \$600,000 consideration.

1. Net Consideration Received: \$1,000,000
  
2. Consideration Paid: \$600,000  
Premium: - 45,055  
Net Consideration Paid: \$554,945
  
3. Adj Value Consideration (improvements):  

$$\begin{array}{rcl} \$554,945 & \times & \frac{156.4}{121.1} \\ & & = \end{array}$$
\$716,708
  
- Depreciation:  

$$\begin{array}{rcl} \$716,708 & \times & \frac{107 \text{ mos.}}{408 \text{ mos.}} \\ & & = \end{array}$$
-187,960
  
- Adj Dep Value Consideration: - 528,748
  
4. Excess: \$ 471,252
  
5. Premium: Percentage: 45% \$ 212,063

